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WJB-TV FT. PIERCE LIMITED PARTNERSHIP

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KENNETH E. HALL
General Manager

June 14, 1993

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FEDERAL COMMUNICATIONS COMMISSION
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VIA FEDERAL EXPRESS

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: MM Docket No: 93-106

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Dear Ms. Searcy:

Enclosed for filing is a copy of the Comments of WJB-TV Limited Partnership to the Notice of Proposed Rulemaking in response to MM Docket No. 93-106. The original and nine copies are being forwarded to you by overnight delivery.

Please acknowledge your receipt of this letter by file-stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed, stamped envelope.

If you have any questions or need additional information, please advise.

Very truly yours,

WJB-TV Limited Partnership

BY: Kenneth E. Hall
Kenneth E. Hall
General Manager

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JUN 15 1993

Before the

FEDERAL COMMUNICATIONS COMMISSION RECEIVED

Washington, DC 20554

JUN 15 1993

In re:

Amendment of Part 74 of the
Commission's Rules Governing
Use of the Frequencies in the
Instructional Television Fixed
Service

MM Docket No. 93-106

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COMMENTS OF WJB-TV LIMITED PARTNERSHIP

In its Notice of Proposed Rulemaking in MM Docket No. 93-106, released on April 26, 1993 (the "Notice"), the Commission sought comment on whether licensees should be permitted to "channel load" all of their educational programming into less than the full block of Instructional Television Fixed Service ("ITFS") channels to which they are licensed; that is, whether they should be allowed to transmit or load all of their educational programming on one (or more) channels, as opposed to having to actually utilize all four for a limited number of hours per week. WJB-TV Limited Partnership ("WJB") supports this proposal and hereby files these initial comments to set forth the reasons for its support.¹

¹ WJB also filed comments to the Public Notice released on July 23, 1992, which preceded this Notice. Because those comments are a part of the record in this proceeding (Notice at paragraph 9), they will not be repeated herein but are incorporated by reference.

I. BACKGROUND

WJB-TV Limited Partnership is the general partner of the entity that owns and operates a thirty-channel wireless cable television system which serves over 6500 subscribers in Ft. Pierce, Florida.² It is also the general partner of entities that are developing similar systems in other markets, including a system that expects to begin operations in Melbourne, Florida this fall.

Like most wireless cable television entrepreneurs, WJB is dependent upon partnerships with the local educational community. Aside from the obvious benefit of increasing its system's channel capacity, without which it simply could not provide a competitive product, WJB has discovered that there is another important benefit from these partnerships; the programming of the educational entities is sought by many viewers and is thus valuable to the system and to the general public. For example, in Ft. Pierce, the local school board produces an after-school television program that is popular with many of its students. Consequently, WJB is an enthusiastic advocate of the benefits of ITFS partnerships.

These arrangements have benefitted the educational community as well. For example, WJB has executed excess capacity lease agreements covering a total of forty ITFS channels in two markets; the lessors include the University of Central Florida, a state university that serves over 22,000 students; Indian River Community College, a state community college that serves

² This system does business under the name of "Coastal Wireless Cable Television."

approximately 48,000 students on five (5) campuses; Brevard Community College, a state community college that serves over 13,000 students on four (4) campuses; and the School Board of St. Lucie County, which serves thousands of public school students in the Ft. Pierce community. Pursuant to their agreements with WJB, these entities have received or expect to receive royalty payments, grants, equipment, programming assistance, technical advice and/or other benefits. Because of the financial crises that currently faces so many educators, most of these entities simply could not afford to offer ITFS programming to their students without WJB's assistance.

WJB's lessors illustrate the importance of ITFS channels, and of lease agreements to support these channels, to educational entities. For example, the University of Central Florida ("UCF") is one of nine (9) state-supported four-year universities in the state of Florida, each of which is expected to meet the educational needs of students from a wide geographical area. One of the areas which UCF is expected to serve is Melbourne. However, because Melbourne is approximately sixty (60) miles from the UCF campus, many prospective students in the community are unable or unwilling to take advantage of UCF's programs. However, through the use of ITFS and with the assistance of WJB, the University expects to begin providing its programming to thirteen (13) sites in Melbourne, where these students will be able to earn credit towards their college degrees without leaving the community. This will provide an obvious benefit to the community and to UCF, which is

able to offer its classes to significantly more students at little incremental cost.

WJB has no desire to alter the mutually-beneficial relationship that exists between educators and the wireless cable industry. Its comments pertain solely to the "channel loading" proposal, an issue that should not adversely affect ITFS licensees, their educational programs, or their students. In fact, channel loading may be beneficial to ITFS providers as savings realized by wireless operators from avoiding the expense of channel mapping may be used to develop additional markets and assist in the development of more ITFS stations.

II. IN GENERAL, WJB SUPPORTS THE CONCEPTS PROPOSED IN THE NOTICE

A. Channel loading typically has the same effect as the channel mapping technology employed today.

It is worth emphasizing that the Commission has authorized the use of channel mapping technology for nearly two

WJB is not aware of any adverse consequences that the channel mapping decision has caused to the educational community.

In fact, more educational users than ever are now enjoying the

right to simultaneous usage in the future can simply enter into short-term contracts, specifying an expiration date before the date of the anticipated simultaneous usage. As the Notice points out, the use of channel loading is "permissive only, and not mandatory" and "educators desiring to transmit instructional programming simultaneously on every channel may continue to do so," subject to their contract rights with a wireless operator. Notice at Paragraph 17.

If the Commission mandates a right to reclaim simultaneous usage, even where a contractual right does not exist, the value of ITFS lease agreements to wireless cable operators will surely diminish. Many operators will be left with the difficult decision of whether to enter into such arrangements at all, in light of the substantial costs of royalties, grants, and assistance to licensees and the threat that the commodity that the operators seek, channel capacity, could be lost at any time. Those that do enter into agreements will likely do so on far different and less favorable terms than are generally offered today.

B. Most of the "safeguards" proposed for protecting the primary purpose of ITFS are simply unnecessary

The Notice also asks for comments on several means of "safeguarding the primary purpose of ITFS." Notice at Paragraph 18. WJB believes that, for the most part, these suggestions are unnecessary.

First, the Notice asks whether channel loading should be "limited so as to free up less than three full-time channels for

commercial programming." Id. Again, WJB believes that this matter should be left up to the contract between the parties. However, common sense dictates that if a smaller number of channels are "freed up", the compensation that operators will be willing to pay for those channels will likewise be smaller.

The Notice also asks whether the Commission should require that a specified number of channels of the required programming hours be scheduled "during specific times of the day, such as between 8:00 a.m. and 10 p.m., Monday through Saturday." Again, WJB disagrees with this proposal. WJB is aware that many ITFS channels reach students who hold full-time jobs; it may be that because of the work schedules of those persons, it would be more convenient for them to take classes at un-traditional times, such as in the early-morning hours, before they go to work. Perhaps some of these students would prefer week-end classes. Because educators must be given the flexibility to meet the demands of these students, WJB cannot agree with this proposal. The goal should be to make educational opportunities as plentiful and flexible as possible and thereby improve the educational level of all citizens. Consequently, any rule or policy that tends to restrict demand and make access to educational programming more limited should be avoided. Channel loading will, in WJB's judgment, continue the march toward making educational programming more widely available.

The Notice also asks whether a comparative advantage in mutually-exclusive cases should be awarded to applicants who

refrain from the use of channel mapping or channel loading. Id. WJB disagrees with this proposal, in large part because it establishes that entities that lease excess capacity will be looked upon less favorably by the Commission than entities that do not. WJB can think of no rational basis for this distinction; indeed, a licensee should not be rewarded for allowing its unused capacity to lay idle. as opposed to leasing it in exchange for compensation

the award of licenses. In particular, those submitting cookie-

technology. WJB believes that its substantial investment in this project will help to assure that this technology becomes a reality.

WJB cautions, however, that even when the new technology is developed, it may take a period of time, perhaps even several years, to implement it. It is likely that adoption of, or conversion to, compression technology will require changes to the physical facilities by which subscribers are served. Aside from the substantial costs that are likely to be entailed, the process will probably prove to be a slow and expensive one, especially for older systems with large subscriber bases. For this reason, and because of the inevitable uncertainties that lie ahead, WJB urges the Commission to ensure that the "temporary period" covers a sufficient period of time to allow introduction and implementation of the new technology on a reasonable and cost-effective basis to all affected users. The better course is to allow channel loading to continue to be used until a particular system has converted to compression technology. The forces of competition, coupled with the efficient use of capital, will drive the wireless operator to transition to compression technology as soon as reasonable. As an operator makes this transition, the rules could legitimately require that the ITFS provider realize a proportionate portion of the increased channel capacity. This appears to WJB to be fair and reasonable, allowing everyone to benefit from compression technology on a proportional basis and at a time when the costs have been determined to be justified, not just technically feasible.

The compression issue does raise one final point. If in fact ten-to-one compression becomes a reality, as the Notice at Paragraph 13 suggests, a wireless cable operator would be able to offer as many as 80 to 130 channels of programming, using only the so-called commercial channels. While this situation might resolve many issues of commercial usage of the ITFS channels, the result could be a negative one for many ITFS users.

Wireless cable programming operators have been told that they must provide a certain number of channels of programming to the public. If they are able to offer a much larger number of channels, they may be able to provide a more diverse and higher quality service to the public. However, this could also result in the loss of some channels that are currently available to the public. This is a complex issue that requires further study and discussion.

market until it is both technically and financially feasible to transition to compression technology. It simply does not make sound policy to require an operator to change technology simply because another technology becomes technically feasible. A better approach is to allow the forces of competition and the efficient use of capital to drive decisions in each market regarding when to